

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

**November 16, 2007**

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Denial of Standing for Contested Case OA 08-04  
Regarding Conservation District Use Application (CDUA)  
OA-3414 for Public Purpose Subdivision of Land for the  
Expansion of the James Campbell Wildlife Refuge

Conservation District Use Application (CDUA) OA-3414  
for Public Purpose Subdivision of Land for the Expansion  
of the James Campbell Wildlife Refuge

**PETITIONER:** Native Hawaiian Legal Corporation for  
Ilioulaokalani Coalition

**APPLICANT:** James Campbell Company LLC.  
c/o Mark Murakami, Esq.  
Carlsmith Ball LLC.

**LANDOWNER:** James Campbell Company LLC.  
Continental Pacific, LLC.  
James C. Reynolds, Inc.

**LOCATION:** Kahuku-Keana, Koolauloa, island of Oahu

**TMK:** (1) 5-6-002:010

**AREA OF PARCEL:**  $\approx$  57.356 less erosion of  $\approx$  34 acres

**AREA OF USE:**  $\approx$  13.1 acres

**SUBZONE:** General

**BACKGROUND:**

The expansion of the James Campbell National Wildlife Refuge was enacted by the US Congress assembled on May 25, 2006. Appropriations have been authorized based upon

Congressional findings stating the US Fish & Wildlife enter into contract with James Campbell Estates to purchase the current leased 240-acres of high-valued wetland habitat of ponds, marshes, freshwater springs, and adjacent land. The Conservation District lies within this approximately 800 acres of adjacent lands expansion area. The habitat area is to be managed in accordance with the National Wildlife Refuge System Improvement Act.

## **CHRONOLOGY**

August 10, 2007, the Office of Conservation and Coastal Lands (OCCL) recommends approval of Conservation District Use Application (CDUA) OA-3414 for public purpose subdivision of land for the expansion of the James Campbell Wildlife Refuge before the Board (**Exhibit A**). A Contested Case oral request was made at this Land Board meeting.

August 20, 2007, the Department received a petition for a Contested Case from the Native Hawaiian Legal Corporation (NHLC) on behalf of the Ilioulaokalani Coalition to intervene in the James Campbell Company LLC.'s CDUA. According to the information presented in the petition, the petitioners believe that native Hawaiian traditional and customary practices including access along the shoreline are "threatened by the proposed subdivision and planned development of lands along the Kahuku shoreline." The petition goes on to state, "The proposed project will increase the intensity of use in the surrounding area and which will adversely affect gathering practices, recreational activities and existing burials in the shoreline area"(**Exhibit B**).

September 27, 2007, the OCCL request that NHLC provide more information regarding the nexus of the proposed land use of the CDUA and potentially harmful impacts to their client, as there is no planned development, no proposed effect on public access to and along the shoreline and no proposed physical change of Conservation District land (**Exhibit C**).

October 24, 2007, the OCCL is in receipt of a correspondence dated October 23, 2007 from the NHLC stating, "the 0.9 acre parcel of Conservation land that will become part of a 168.984 acre zoning parcel jointly owned by Continental Pacific, LLC., and James C. Reynolds, Inc. Continental Pacific, LLC. has announced plans to develop Lot 1001, including building homes along the shoreline of Lot 1001. CDUA OA-3414 completely fails to address the planned use of the 0.9 acre parcel that will become part of Lot 1001" (**Exhibit D**).

## **DISCUSSION:**

The application is to effectuate a boundary line to expand the existing Wildlife Refuge management area to protect native Hawaiian species in perpetuity. The proposed use as stated in the Staff submittal for CDUA OA-3414, clearly states, "The 12.2-acre portion and the remaining 0.9-acre portion of the Conservation District shall remain as is." The petitioners have not demonstrated in any way or form how the proposed action may affect


native Hawaiians positively or negatively. As such, this is not the venue for the petitioner to be 'aggrieved.'

Therefore, Staff recommends as follows:

**RECOMMENDATION:**

- A. That the Board of Land and Natural Resources deny standing to the Ilioulaokalani Coalition.
- B. That the Board of Land and Natural Resources APPROVE CDUA OA-3414 for Public Purpose Subdivision of Land for the Expansion of the Jame Campbell Wildlife Refuge Located at Kahuki, Koolauloa, island of Oahu, TMK:(1) 5-6-002:010 as shown in **Exhibit A**.

Respectfully submitted,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thiele, Chairperson  
Board of Land and Natural Resources

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

180-Day Exp. Date: December 29, 2007

November 16, 2007

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Conservation District Use Application (CDUA) OA-3414  
Public Purpose Subdivision of Land for the Expansion of  
the James Campbell Wildlife Refuge

**APPLICANT:** James Campbell Company LLC  
c/o Mark Murakami, Esq.  
Carlsmith Ball LLC.

**LANDOWNER:** James Campbell Company LLC.  
Continental Pacific, LLC.  
James C. Reynolds, Inc.

**LOCATION:** Kahuku, Koolauloa, island of Oahu

**TMK:** (1) 5-6-002:010

**AREA OF PARCEL:**  $\approx$  57.356 less erosion of  $\approx$  34 acres

**AREA OF USE:**  $\approx$  13.1 acres

**SUBZONE:** General

**BACKGROUND:**

On May 25, 2006, the United States Congress enacted the James Campbell National Wildlife Refuge Expansion Act of 2005. Appropriations have been authorized for the United States Fish & Wildlife Services (USFWS) to enter into contract with James Campbell Estates to purchase the current leased 240-acres of high-valued wetland habitat of ponds, marshes, freshwater springs, and approximately ( $\approx$ ) 800-acres of adjacent lands that includes the subject Conservation District area. This new expansion of habitat area is to be managed in accordance with the National Wildlife Refuge System Improvement Act (Exhibit 1 & 2).

**EXHIBIT A**

## **DESCRIPTION OF AREA/CURRENT USE:**

The subject area is located on the northeast coast of the island of Oahu within Kahuku ahupua'a within the Koolauloa District. The subject parcel is located in the Urban, Agricultural and Conservation State Land Use Districts. The Conservation District is located along a portion of the northwest coastline of the subject parcel, and contains land 150-feet inland from the certified shoreline. The subject area is vacant and is bounded by the Pacific Ocean to the east, the Kahuku Golf Course to the south and the Federal James Campbell Wildlife Refuge to the northwest (**Exhibit 3 & 4**).

According to the applicant, there are no existing structures on the subject parcel and it is believed that the area has not been graded or landscaped. There are no utilities and access is via an existing dirt road.

The Conservation District portion features may include coastal dunes, coastal wetlands, and coastal strand. Endangered species of Hawaiian waterbirds, migratory shorebirds, waterfowl, seabirds, endangered monk seals and green sea turtles may utilize the area. Native plant species of the area include beach naupaka and pohuehue (**Exhibit 5**).

The State Historic Preservation Division indicates there are at least three reports that document the discovery of human remains and burials. It is highly likely that other historic properties, including burials, may be located in subsurface deposits throughout the subject parcel.

## **PROPOSED USE**

The applicant is proposing to subdivide 13.1 acres of Conservation District land into a 12.2-acre parcel and a 0.9-acre parcel. The project in its entirety consists of consolidation of 9 lots that will then be subdivided into 2 lots with James Campbell Company LLC owning one lot and Continental Pacific, LLC and James C. Reynolds, Inc. owning the other lot. The 12.2-acre portion shall be incorporated into the USFWS Refuge. The 0.9 portion of the Conservation District shall remain the property of Continental Pacific, LLC and James C. Reynolds, Inc. (**Exhibit 6**)

The purpose of the subdivision is to complete the boundary for the USFWS to acquire the Campbell parcel for expansion of the James Campbell National Wildlife Refuge. Acquisition by the USFWS shall permanently protect the endangered species habitat and improve the management of the Refuge for future generations.

## **SUMMARY OF COMMENTS**

The Office of Conservation and Coastal Lands referred this application to the following agencies for review and comment: the State-Department of Health; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; the Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement, Engineering, Forestry & Wildlife, Historic Preservation and the Oahu District Land

Office; and the City & County of Honolulu - Department of Planning & Permitting and the Koolauloa Neighborhood Board. In addition, the CDUA was also sent to the nearest public library, the Kahuku Public Library, to make this information readily available to those who may wish to review it.

Comments were received by the following agencies and summarized by Staff as follows:

THE STATE

DEPARTMENT OF HEALTH

We strongly recommend that your review all of the Standard Comments on our website. Any comments specifically applicable to this application should be adhered to.

*Wastewater Branch*

As the purpose of the subdivision is to create the boundary for the expansion of the James Campbell National Wildlife Refuge, we have no objection to the subdivision. No wastewater is being generated by this action.

*Applicant's response*

As indicated by your office comments, it is noted that no wastewater is being generated by the proposed action. We appreciate that your office has no specific objections to our permit request. We have reviewed the Department of Health's Standard Comments at the website link in your letter. The Standard Comments are not applicable to our proposed action of subdivision without construction or development.

OFFICE OF HAWAIIAN AFFAIRS

We have no objections to the subdivision as part of the James Campbell National Wildlife Reserve. Our position is greatly influenced by the applicant's commitment that "No construction or other development within the Conservation District is contemplated at this time." OHA is generally supportive of projects that enhance Hawaii's natural resources while avoiding adverse impacts to the landscape; this project appears to conform to this goal.

In accordance with Section 6E-46.6, HRS and Chapter 13-300, HAR, if any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the State Historic Preservation Division shall be contacted.

*Applicant's response*

Section 6E-46.6 of the HRS and Chapter 13-300 of the HAR shall be complied with if any significant cultural deposits or human skeletal remains are encountered on such

parcels. In such event, work will stop in the immediate vicinity and the State Historic Preservation Division shall be contacted.

DEPARTMENT OF LAND AND NATURAL RESOURCES

*Engineering*

No comments

*Division of Forestry and Wildlife (DOFAW)*

No comments

*Historic Preservation Division*

Contrary to assertions by the applicant, there are known historic properties within parcel 010. Our library contains at least three reports that document the discovery of human remains and burials. It is highly likely that other historic properties, including burials, are located in subsurface deposits throughout the subject parcel.

If no development is planned we have no specific objections to this permit request. Should ground disturbance of any kind is planned for the subject area, then we would likely request a thorough archaeological investigation be conducted prior to development.

*Applicant's response*

A review of three of four files indicates that none of those known historic properties are within the 13.1-acre Conservation District that is the subject of the CDUA. As the application is for subdivision without construction or development at this time, we acknowledge your comments of no specific objections to this permit request.

*Oahu District Land Office (ODLO)*

No comments

THE CITY AND COUNTY OF HONOLULU

DEPARTMENT OF PLANNING AND PERMITTING

We find that the site is located within the Special Management Area (SMA). As nine lots will be consolidated into two lots, pursuant to ROH §25-1.3(2)(L), the subdivision of a parcel into two parcels, when there is no associated construction activity being proposed, is not considered "development" for purposes of the SMA regulations. The project will not require the approval of an SMA Use Permit. Subsequent subdivision of either of the resulting two lots may not thereafter qualify for this exemption.

## ANALYSIS

After reviewing the application, by correspondence dated April 04, 2007, the Department has found that:

1. The proposed use is an identified land use in the General subzone of the Conservation District, pursuant to §13-5-22, Hawaii Administrative Rules (HAR), P-11, SUBDIVISION OR CONSOLIDATION OF PROPERTY, D-1, "Subdivision of property into two or more legal lots of record which serves a public purpose and is consistent with the objectives of the subzone." Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to § 13-5-40 of the Hawaii Administrative Rules, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, §11-200-8(a)(1), the proposed use is exempt.

Notice of CDUA OA-3414 was published in the April 23, 2007 issue of the Environmental Notice. Documentation from the City and County of Honolulu dated March 12, 2007 states that the proposed subdivision is exempt from the Special Management Area requirements.

## CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in §13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed subdivision shall define a portion of the new boundary of the Wildlife Refuge that acts to conserve, protect and preserve the important natural resources of the subject area. The habitat area is to be managed in accordance with the National Wildlife Refuge System Improvement Act.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban uses would be premature.



The proposed use is an identified land use that does not infringe upon the existing open space.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Staff believes the proposed use is consistent with Chapter 205A, HRS. In addition, the City & County of Honolulu, Department of Planning and Permitting, states that the proposed subdivision is exempt from the Special Management Area requirements.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The proposed subdivision shall define a boundary that shall effectuate an Act of Congress for the National Wildlife Refuge expansion. Therefore Staff believes the proposed subdivision shall promote positive impacts for the existing natural resources within the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The action shall have no physical impact on the land.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff is of the opinion that the natural beauty and open space characteristics of the Conservation District will be maintained, preserved and improved upon.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed action will decrease the intensity of land use by allowing for the expansion of the Wildlife Refuge. The coastal land and resources shall be protected in perpetuity.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff is of the opinion that the proposed subdivision will not be materially detrimental to the public health, safety and welfare.

## **DISCUSSION**

The underlying purpose of this subdivision is to create a boundary on the northeast corner within the Conservation District to effectuate an Act of Congress for the US Fish & Wildlife Services to acquire lands from the James Campbell Company LLC. for the expansion of the National Wildlife Refuge in accordance with the James Campbell National Wildlife Refuge Expansion Act of 2005.

As the subject location has been identified for acquisition to expand the Wildlife Refuge, the coastal area shall be protected in perpetuity to support important habitat for native and indigenous species of flora and fauna in addition to promoting the recovery of endangered species that may be found in the area. Staff believes federal stewardship and the incorporation of the proposed 12.2-acre area into the Refuge is of the best interest to the land and the natural resources of this area.

The 12.2-acre portion and the remaining 0.9-acre portion of the Conservation District shall remain as is. Any and all proposed land uses for this area shall require Departmental review prior to initiation.

## **RECOMMENDATION**

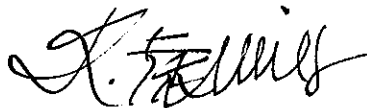
Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources **APPROVE** this application for Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge Located at Kahuku, Koolauloa, island of Oahu, TMK:(1) 5-6-002:010 subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall provide to the Office of Conservation and Coastal Land a copy of the final subdivision map approved by the City & County of Honolulu;
- 4) Upon final completion of the subdivision, both parcels that lie within the Conservation District shall provide documentation (e.g. book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument;
- 5) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be

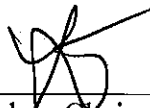
false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

- 6) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 7) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 8) Other terms and conditions as may be prescribed by the Chairperson; and
- 9) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands



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Laura H. Thiele, Chairperson  
Department of Land and Natural Resources

teleconference and the availability of someone to preside over the meeting. Written material and requests to make oral presentations at the September 13th meeting should reach the Coast Guard on or before September 7, 2006.

**ADDRESSES:** The NMSAC teleconference meeting will be held in room 5222, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC. Send written material and requests to make oral presentations to Mr. John Bastek, Commandant (G-PCP-1), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001. This notice is available on the Internet by performing a simple search for the docket number at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Bastek, NMSAC Executive Secretary, telephone 202-267-2722, fax 202-267-4130.

#### **SUPPLEMENTARY INFORMATION:**

##### **Procedural**

The September 13th teleconference meeting is open to the public. Please note that the meeting may close early if all business is finished. Security requires that any member of the public who wishes to attend the public session at Coast Guard Headquarters provide his or her name and date of birth no later than 4 p.m. EDT, Thursday, September 7, 2006, to Mr. John Bastek e-mail at [jbastek@comdt.uscg.mil](mailto:jbastek@comdt.uscg.mil), or via phone at (202) 267-2722. Photo identification will be required for entry into the building. Individuals wishing to attend the meeting via the teleconference call in number shall contact Mr. Bastek for the teleconference information.

If you would like a copy of your written material distributed to each member of the Committee in advance of the meeting, please submit 25 copies of the material to Mr. John Bastek no later than September 7, 2006.

Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92-463, 86 Stat. 770).

##### **Agenda of September 13, 2006, Teleconference**

The agenda includes the following:  
(1) Draft of Report to Congress.

##### **Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact Mr. John Bastek as soon as possible at the address or phone number listed under the **FOR FURTHER INFORMATION CONTACT** section.

Dated: August 28, 2006.

**F.J. Sturm,**  
*Captain, U.S. Coast Guard, Deputy Director*  
*Inspections & Compliance.*  
[FR Doc. E6-14584 Filed 8-31-06; 8:45 am]  
BILLING CODE 4910-15-P

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **Notice of Boundary Expansion, James Campbell National Wildlife Refuge, Oahu, HI**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that Congress has enacted the "James Campbell National Wildlife Refuge Expansion Act of 2005" (Act). The Act authorizes an expansion of the James Campbell National Wildlife Refuge's (Refuge) approved boundary by approximately 750 acres, resulting in a revised Refuge boundary encompassing approximately 1,100 acres. This notice is being furnished consistent with section 4(c)(2) of the Act.

**ADDRESSES:** A map depicting the expanded approved Refuge boundary and other information regarding the Refuge expansion is available on the Internet at <http://www.fws.gov/pacific/planning/>.

#### **FOR FURTHER INFORMATION CONTACT:**

Sylvia R. Pelizza, Refuge Manager, Oahu National Wildlife Refuge Complex, 66-590 Kamehameha Highway, Room 2C, Haleiwa, HI 96712; phone (808) 637-6330; fax (808) 637-3578; or e-mail [FW1PlanningComments@fws.gov](mailto:FW1PlanningComments@fws.gov).

**SUPPLEMENTARY INFORMATION:** Congress has enacted the "James Campbell National Wildlife Refuge Expansion Act of 2005" (Act), Public Law 109-225 (May 25, 2006). The Act was created in response to longstanding public concerns for protecting natural resources and open space on the Kahuku coastal plain on the Island of Oahu. The Act authorizes an expansion of the Refuge's approved boundary by approximately 750 acres. The expanded approved Refuge boundary includes land on the makai (ocean) side of Kamehameha Highway, including coastal dunes, but not public beaches. This authorization allows the Service to acquire land within the expanded approved Refuge boundary from the Estate of James Campbell. The lands will link the Refuge's two units—the Kii Unit and Punamano Unit—into a single unit of protected wildlife habitat totaling approximately 1,100 acres.

The Refuge expansion will protect the natural coastal wetlands and natural dune habitats of the Kahuku coastal area as part of the National Wildlife Refuge System. Management of the lands and waters will ensure a protected haven for all four species of endangered Hawaiian waterbirds and a variety of migratory shorebirds and waterfowl that use coastal wetlands and surrounding lands. Other native wildlife species that will benefit from the Refuge expansion include the native Hawaiian Owl, a native damselfly, and seabirds that formerly nested in the dune habitat. Protection of dune and strand vegetation near the coast will also conserve resting habitat for the endangered Hawaiian monk seal and nesting habitat for threatened green sea turtles that use Kahuku beaches. The expansion will also provide visitors increased opportunities to view native Hawaiian wildlife and some of the last remaining pristine coastal habitat on Oahu.

The Service is now authorized to proceed with acquiring land from the Estate of James Campbell, which may include providing lease extensions to long-term leaseholders within the expanded approved Refuge boundary.

Dated: August 28, 2006.

**David J. Wesley,**  
*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. E6-14619 Filed 8-31-06; 8:45 am]  
BILLING CODE 4310-55-P

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **Final Comprehensive Conservation Plan and Environmental Impact Statement for Crab Orchard National Wildlife Refuge (NWR), Williamson, Jackson, and Union Counties, IL**

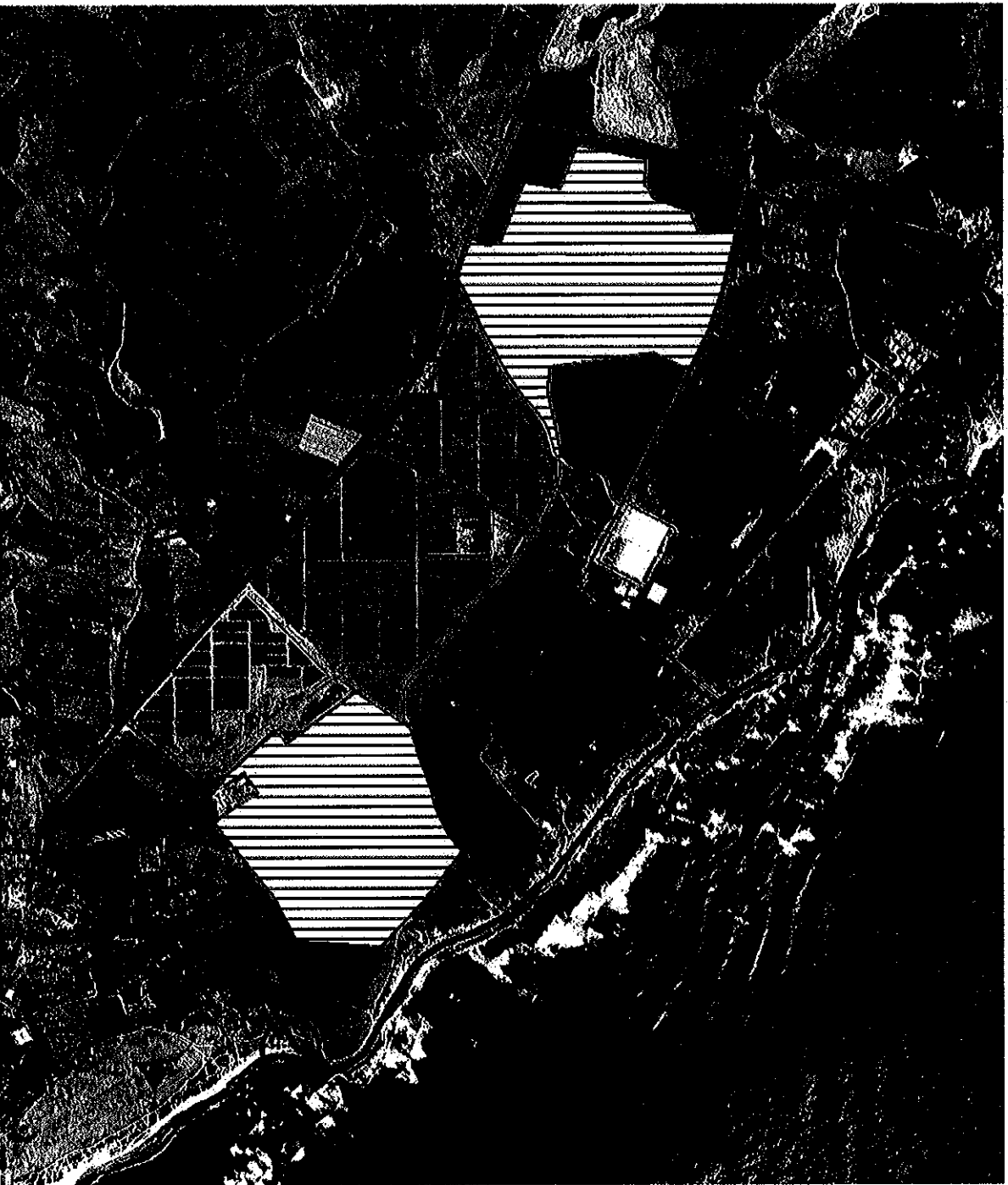
**AGENCY:** Fish and Wildlife Service, Interior.




**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service announces that the Final Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) is available for Crab Orchard National Wildlife Refuge. The Final CCP/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

**EXHIBIT |**

# James Campbell National Wildlife Refuge-Expansion



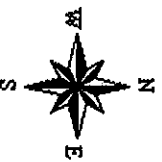
-  Current Refuge Land
-  Previous Refuge Boundary
-  Final Approved Refuge Boundary

Map Location



Island of Oahu, Hawaii, USA

0.1 0 0.1 0.2 0.3 0.4 miles  
1:20,000 1 inch = 0.33 miles



City & County of Honolulu

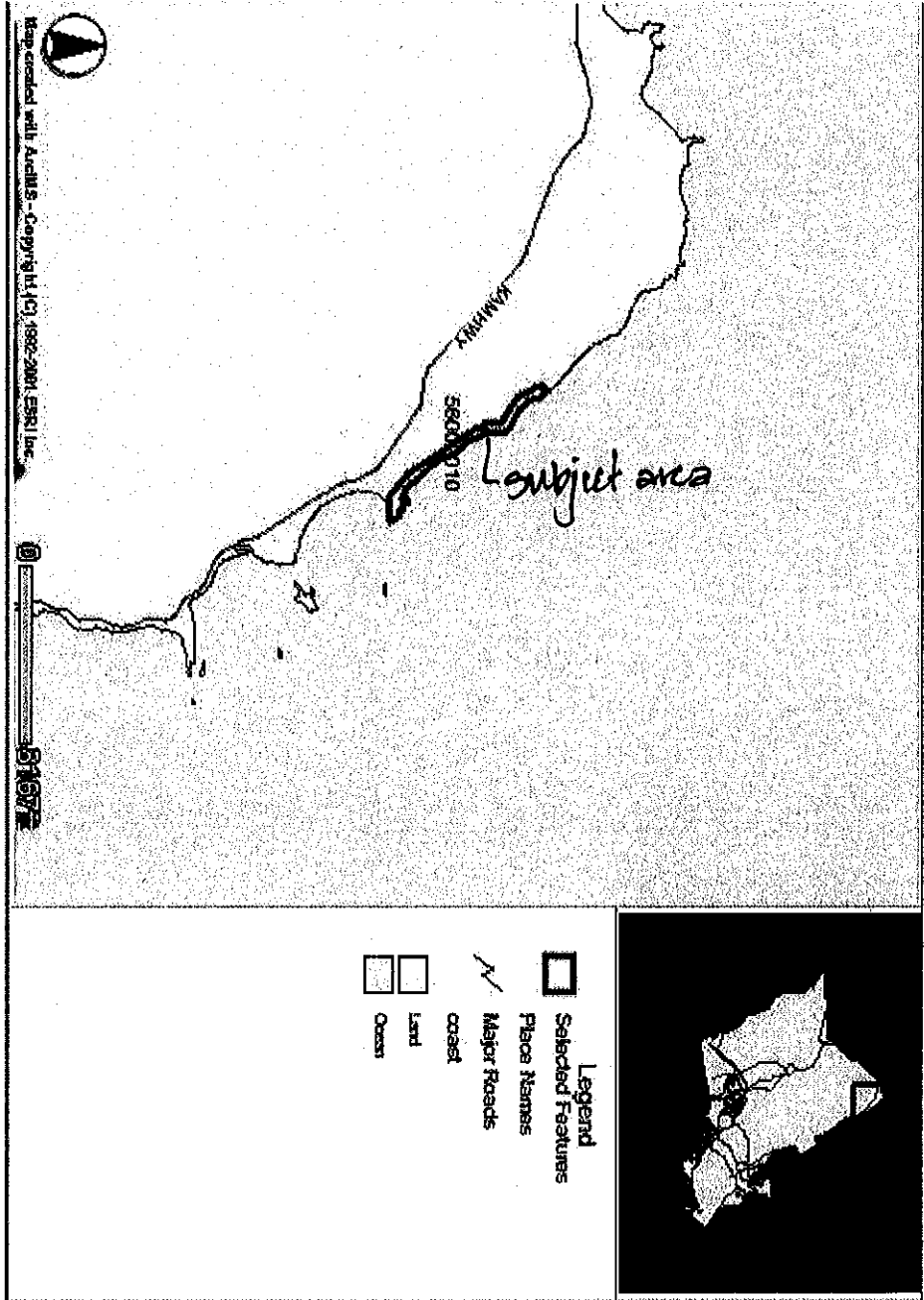
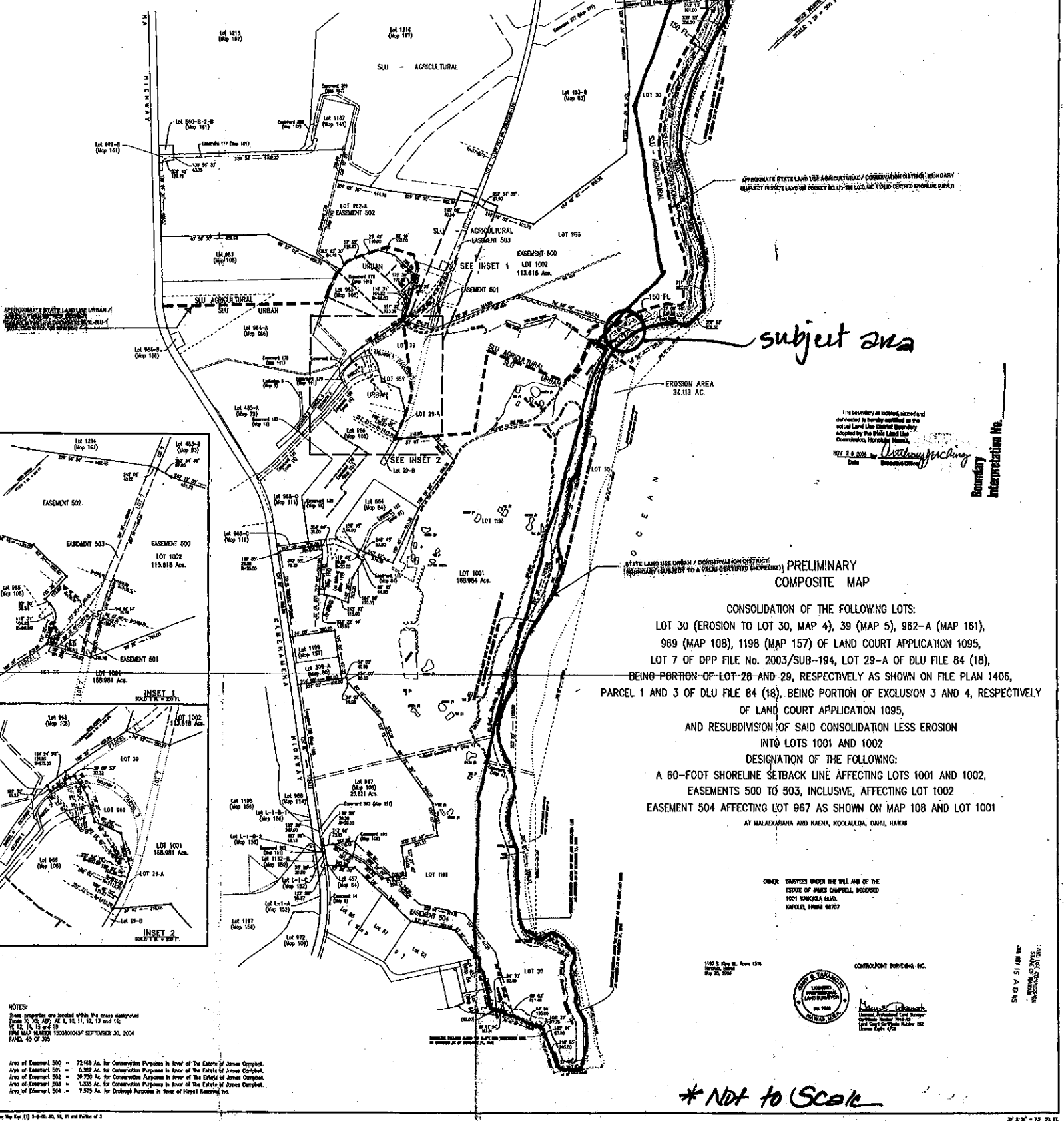


EXHIBIT 3

PARCEL less erosion



CONSERVATION DISTRICT



\* Not to Score

**EXHIBIT 4**



North  
↗

[http://www.soest.hawaii.edu/coasts.2006\\_Ig.C75371.jpg](http://www.soest.hawaii.edu/coasts.2006_Ig.C75371.jpg) photo dated 10-11-06

EXHIBIT 5



Lot 1214  
(Map 167)

SLU - AGRICULTURAL

Lot 483-B  
(Map 83)

LOT 30

SLU - AGRICULTURAL  
SLU - CONSERVATION

APPROXIMATE  
(SUBJECT TO)

Red line indicates proposed  
subdivision within the  
Conservation District

SEE INSET 1

EASEMENT 501

150 Ft.

EROSION AREA  
34.113 AC.

EXHIBIT 6

A \*NOT TO SCALE

## PETITION FOR A CONTESTED CASE HEARING

## BOARD OF LAND AND NATURAL RESOURCES

RECEIVED  
OFFICE OF CONSERVATION  
AND NATURAL LANDS  
2007 AUG 20 P 3 32

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

1. **Name:** 'Īlio'ulaokalani Coalition **Phone:** (808) 521-2302
2. **Address:** c/o Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, Hawai'i 96813
3. **Attorney:** Native Hawaiian Legal Corporation **Phone:** (808) 521-2302  
Camille K. Kalama  
Moses K. N. Haia III
4. **Address:** Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, Hawai'i 96813
5. **Subject Matter:** Conservation District Use Application (CDUA) OA – 3414 Regarding Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge by James Campbell Company LLC. Located at Kahuku, Koolauloa, Oahu, portion of TMK:(1) 5-6-002:010
6. **Date of public hearing/Board meeting:** Friday, August 10, 2007
7. **Legal authority under which hearing, proceeding or action is being made:**  
  
HRS Chapter 91, HRS Chapter 183C, HAR Chapters 13-1 and 13-5.
8. **Nature of your specific legal interest in the above matter, including tax map key of property affected:**

Rights including but not limited to those protected under HRS § 1-1, HRS § 7-1, Hawaii Const. Art. XI, secs. 1 & 7, Art. XII, sec. 7. More specifically, Petitioners right to exercise their traditional and customary native Hawaiian rights in, among, and around the Koolauloa shoreline area are derived from HRS § 1-1 and HRS § 7-1. These rights include, but are not limited to, access to fishing grounds in, around, and among the shoreline of the affected areas and the exercise of other rights for religious, cultural, and subsistence purposes.

Article XII, section 7 of the Hawaii Constitution recognizes the importance of such rights and places an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights and confers upon the State and its agencies the power to protect these rights and prevent any interference with the exercise of these rights. In effect, the exercise of such rights is a public trust purpose. The

exercise of these rights by Petitioners is threatened by the proposed subdivision and planned development of lands along the Kahuku shoreline.

HRS Chapter 6E also recognizes that the historic and cultural heritage of the State, including historic burials is an important asset and that rapid economic development threatens the preservation of these assets. These assets are also part of the public trust and require protection. The preservation and protection of historic burials are threatened by the subdivision of the shoreline area and the planned development of the shoreline parcel.

Petitioner 'Īlio'ulaokalani is an island wide grassroots organization comprised of kumu (master teachers) and loea (cultural experts) whose purpose is to link and apply traditional Hawaiian cultural principles, practices and skills to effect educational, social, environmental and economic change for the betterment and advancement of native Hawaiians and the community at large. The Coalition seeks to preserve and protect our natural environment and cultural resources.

#### **Tax Map Key Numbers**

**9. Koolauloa: (1) 5-6-02-010**

**10. The specific disagreement, denial or grievance with the above matter:**

The proposed project will increase the intensity of use in the surrounding area and which will adversely affect gathering practices, recreational activities and existing burials in the shoreline area. The applicant and DLNR have inadequately assessed existing conditions, uses and impacts of the resubdivision. The CDUA fails to meet the criteria in HAR Chapter 13-5 for obtaining a conservation district use permit as well as the public trust doctrine and other applicable legal authority. The applicant has failed to meet its burden of demonstrating that the proposed land use is consistent with the criteria detailed in HAR § 13-5-30(c).

**11. Outline of specific issues to be raised:**

- 1) Whether the James Campbell Company LLC must comply with the requirements of HRS Chapter § 343-5(b) and prepare and circulate for public review and comment an Environmental Assessment and an Environmental Impact Statement prior to any subdivision of land within the Conservation area.
- 2) Whether the subdivision of shoreline property and subsequent development violates Petitioners constitutionally protected traditional and customary native Hawaiian rights that include, but are not limited to, the gathering of marine resources in the area and access to those areas.
- 3) Whether the Board of Land and Natural Resources has a legal obligation to determine the extent of constitutionally protected traditional and customary native

Hawaiian rights and whether the planned development of the area and use permitted by the subdivision of land impacts these rights.

**12. Outline of basic facts:**

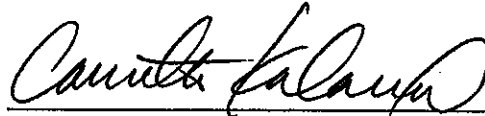
The members of Petitioner 'Īlio'ulaokalani Coalition are Native Hawaiian. Members of Petitioner 'Īlio'ulaokalani Coalition reside and exercise, have exercised, or desire to exercise their traditional and customary native Hawaiian rights within the Kahuku area. Specifically, members have used the area for access to fishing grounds and for fishing and the exercise of other subsistence activities. In addition, the shoreline area that is also part of the proposed development includes sand dunes, which are known as common areas for historic burials.

**13. The relief or remedy to which you seek or deem yourself entitled:**

- (1) Preparation of an Environmental Assessment pursuant to HRS Chapter 343 to evaluate the full range of impacts of the planned development of the area on the on constitutionally protected rights traditionally and customarily exercised for religious, subsistence, and cultural purposes and historic sites in the area.
- (2) Denial of CDUA OA – 3414.

On behalf of 'Īlio'ulaokalani Coalition, Camille Kalama of the Native Hawaiian Legal Corporation hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above.

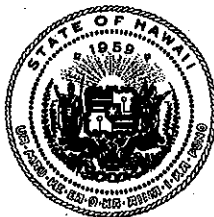
**Dated:** August 20, 2007



Camille K. Kalama  
Moses K. N. Haia III

**Attorneys for Petitioners**  
'Īlio'ulaokalani Coalition

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

**OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809**

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:TM

CC: OA 08-04

Camille K. Kalama  
Moses K. N. Haia  
Native Hawaiian Legal Corporation  
1164 Bishop St. #1205  
Honolulu, Hawaii 96813

SEP 27 2007

Dear Ilioulaokalani Coalition Counsel,

**SUBJECT: Conservation District Use Application (CDUA) OA-3414 Regarding Public Purpose Subdivision of land for the expansion of the James Campbell Wildlife Refuge by James Campbell Company LLC. Located at Kahuku, Koolauloa, Oahu portion of TMK:(1) 5-6-002:010**

The Office of Conservation and Coastal Lands (OCCL) has carefully reviewed your clients petition and notes that the nature of the specific legal interest is the right to exercise traditional and customary native Hawaiian rights along the shoreline to include but are not limited to access to fishing grounds in, around, and among the shoreline of the affected area and the exercise of other rights for religious, cultural, and subsistence purpose. According to the information presented in the petition, the Petitioners believe that these rights are threatened by the proposed subdivision and planned development of lands along the Kahuku shoreline.

Furthermore, the petition states that the preservation and protection of historic burials are threatened by the subdivision of the shoreline area and the planned development of the shoreline parcel. Your client believes that the proposed subdivision will increase the intensity of use in the surrounding area and will adversely affect gathering practices, recreational activities and existing burials in the shoreline area.

The petition states that the applicant and the Department have inadequately assessed existing conditions, uses and impacts of the proposal and that the CDUA fails to meet the criteria of HAR, §13-5-30(c). To remedy the situation, your client seeks to have the applicant prepare an Environmental Assessment pursuant to HRS Chapter 343 to evaluate the full range of impacts of the planned development of the area on the constitutionally protected rights traditionally and customarily exercised for religious, subsistence, and cultural purposes and historic sites in the area; and denial of the subject CDUA.

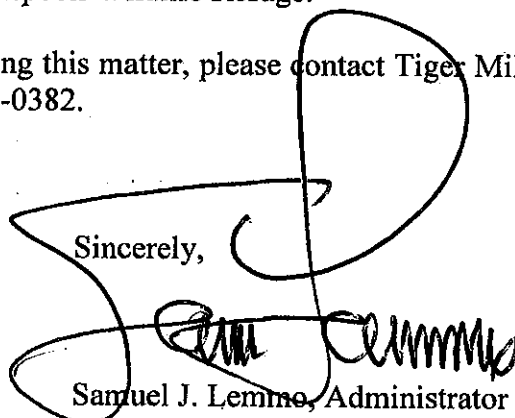
**EXHIBIT C**

In regards to CDUA OA-3414, there is no planned development of lands within the Conservation District. Furthermore the CDUA states that the proposed land use does not have an effect on public access to and along the shoreline because the proposed land use does not include changes to the physical use of Conservation District land. The purpose of the proposed use is to create a boundary within the Conservation District to effectuate an Act of Congress for the US Fish & Wildlife Services to acquire lands for the expansion of the National Wildlife Refuge for permanent protection and survival of endangered Hawaiian waterbird populations and other native Hawaiian species such as endemic plants and monk seals and turtles that may utilize the shoreline. Thus, we are puzzled by your client's request for a Contested Case Hearing.

The CDUA clearly states that there is no development being proposed. The area shall become a Federal Wildlife Refuge. We do not yet see a nexus between your client's claims of harm and the potential direct effects of the CDUA on your client's interest. Please further specify how your client is being impacted by this CDUA's proposed action of public purpose subdivision of land for the expansion of the James Campbell Wildlife Refuge.

Should you have any questions regarding this matter, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Sincerely,



Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

c: Chairperson



# NATIVE HAWAIIAN LEGAL CORPORATION

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October 23, 2007

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STATE OF HAWAII

Mr. Samuel J. Lemmo, Administrator  
Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, Hawaii 96809

RE: 'Ilio'ulaokalani's Request for Contested Case Hearing

Dear Mr. Lemmo:

We received your letter dated September 27, 2007, requesting further specification as to how CDUA OA-3414 affects our client, 'Ilio'ulaokalani's, interests in gathering, fishing, and burials in the Kahuku area. According to the application, the consolidation and resubdivision of the subject area into Lots 1001 and 1002 creates a 12.2 acre parcel and a 0.9 acre parcel of Conservation District, General Subzone Land. The 0.9 acre parcel of Conservation Land will become part of a 168.984 acre zoning parcel jointly owned by Continental Pacific, LLC, and James C. Reynolds, Inc. Continental Pacific, LLC has announced plans to develop Lot 1001, including building homes along the shoreline of Lot 1001. CDUA OA-3414 completely fails to address the planned use of the 0.9 acre parcel that will become part of Lot 1001.

Further, the stated purpose of the proposed resubdivision is to "create the legal boundary between the James Campbell National Wildlife Refuge expansion area and the Applicants' remaining lands." The consolidation and resubdivision of the area permits joint owners Continental Pacific, LLC and James C. Reynolds, Inc. to obtain ownership of Lot 1001, a necessary step towards the development of Lot 1001. Therefore, the Board of Land and Natural Resources must evaluate the impacts of the planned development of Lot 1001 on traditional and customary rights and resources in the area of Lot 1001 in considering the approval of CDUA OA-3414.

I look forward to hearing from you regarding a hearing date. Should you have any questions or concerns related to the above, you may contact me or Mr. Moses Haia at (808) 521-2302. Mahalo.

Sincerely,

Camille Kalama  
Staff Attorney

cc: Victoria Holt-Takamine  
President, 'Ilio'ulaokalani Coalition

**EXHIBIT D**

*Services made possible with major funding from the Office of Hawaiian Affairs.*

LSC